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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,040	07/25/2003	Richard Allen Druk		3725

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RICHARD A. DRUK
1811 N. 600 W.
WEST BOUNTIFUL, UT 84087

EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,040

Applicant(s)

DRUK ET AL.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12, drawn to a spinning lure, classified in class 43, subclass 42.19.
 - II. Claims 13-18, drawn to a retainer for a lure, classified in class 43, subclass 42.06.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does

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not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the spinner lure has its own utility. The subcombination has separate utility such as with other lures without a spinner.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Druk on November 16, 2004 a provisional election was made without traverse to prosecute the invention of Group II, claims 13-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-12 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 13-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly

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and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claims must be in one sentence form only. Note the format of the claims in the patents cited. It is not clear how the retainer engages the fishing lure since the drawings show the lure well behind the retainer and it is not clear how the connector being locked in position can minimize the line and leader from becoming tangled ? It is not clear what the relationship is between the connector, the fishing lure, the leader, and the fishing line. It is not clear if applicant means to positively claim these elements. It is not clear if the fishing scent is the means for supporting the leader line and fishing hook or artificial bait ? it is not clear where the fish attracting scent is placed ? In claim 13, does applicant wish to invoke 35 USC 112, sixth paragraph ? In claim 17, it is not clear what is made of plastic, the leader line or the retainer ?

7. Claim 13 recites the limitation "said leader line and fishing hook or artificial bait" in line 2. There is insufficient antecedent basis for this limitation in the claim.

8. Regarding claim 16, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

9. Claim 17 recites the limitation "the leading end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 13-16, as can be understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Thayer et al.

The patent to Thayer shows a fishing lure having a retainer 10 with two parts 20, 26 having a plurality of circular holes 50, 50 as shown in Fig. 3. Thayer shows that fishing scent can be placed in the retainer. The retainer supports a leader line or fishing line 14, 16 with hooks 28. Thayer shows the retainer having opposite leading and trailing ends and an axial bore between the ends enabling the retainer to be slid onto and off the leader line. In reference to claim 15, Thayer shows the retainer engaging the fishing lure such as shown in Fig. 1 where the leader line, the fishing hook or artificial bait can be attached with sufficient frictional force to press against the fishing lure so as to hold the retainer in place. In reference to claim 16, Thayer shows connecting member 30 held by the retainer whereby minimizing the members from bending or swinging and thus minimizing the hook from becoming tangled with the fishing line 32 when casting as shown in Figs. 1-2.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 17-18, as can be understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Thayer et al.

The patent to Thayer shows a fishing rig having a retainer and a connector as discussed above. In reference to claim 17, Thayer shows the leader line 14 having a predetermined length. Thayer does not disclose that the retainer or line are plastic, but it would have been obvious to employ an old and well known plastic line since the selection of a known material is based on its suitability for the intended use. See *In re Leshin*, 125 USPQ 416. In reference to claim 18, Thayer shows an egg shaped retainer, but it would have been obvious to employ an outer cylindrical shape of a generally uniform cross-section since changes in shape are obvious. See *In re Dailey et al.*, 149 USPQ 47.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Volaski, Jensen, Nafziger, Woodman, Coxwell, Muko, Visser, Colbert, Duller, Miner, Gfroerer, Moffett, Schachte, and Pease show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR